

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7659

Petition of Vermont Electric Cooperative, Inc. for a)
declaratory ruling, pursuant to 3 V.S.A. Section)
808 and PSB Rule 2.403, to interpret and define)
terms in General Order 51)

Order entered: 11/17/2010

I. INTRODUCTION

On June 4, 2010, Vermont Electric Cooperative, Inc. ("VEC"), pursuant to 3 V.S.A. Section 808 and Public Service Board ("Board") Rule 2.403, filed a petition seeking a declaratory ruling that certain electric facilities it proposes to construct or reconstruct are not tie lines or transmission lines under General Order No. 51 ("G.O. 51"), and accordingly, not subject to Board review under 30 V.S.A. Section 248. However, the testimony filed in support of that petition asked not only for the ruling sought in the petition, but also for a more generalized form of relief that would be applicable to all of VEC's facilities. At page 2 of his prefiled testimony, VEC's witness asked for relief consistent with earlier Board rulings given to other electric distribution utilities that simply provided clarifying definitions for certain terminology in G.O. 51 that those utilities could utilize in constructing and maintaining their systems.¹ In those prior rulings, the Board did not determine that any specific facilities were exempt from Board review. On the other hand, at page 10 of his prefiled testimony, VEC's witness asked the Board to determine that a list of facilities specified on a prefiled exhibit were not transmission facilities and thus exempt from Board review under 30 V.S.A. § 248.²

Due to this apparent discrepancy, on August 12, 2010, the Board issued a memorandum to VEC, the Department of Public Service ("Department") and the Agency of Natural Resources ("ANR"). The memorandum asked VEC to: (1) clarify the nature of the relief it was requesting;

1. Abendroth pf. at 2.

2. Abendroth pf. at 10.

and, (2) provide one-line diagrams for specified portions of the facilities that it had asked the Board to review. This additional material was to be provided by VEC no later than August 27, 2010. The memorandum also asked the Department and ANR to provide comments on VEC's clarified request no later than September 3, 2010.

On August 20, 2010, in response to the Board's memorandum, VEC filed an amended petition ("Amended Petition") and supplemental prefiled testimony. In the Amended Petition, VEC explained that it was asking the Board to adopt for VEC the same clarifying definitions for G.O. 51 that it had previously adopted for certain other electric distribution companies, or if it would be more efficient, that the Board bifurcate the process and (1) declare certain specific VEC facilities exempt from review under section 248, and (2) grant the more generalized relief at a later time.³ In its amended filing, VEC noted that it did not have the one-line diagrams requested by the Board in its August 12, 2010, memorandum.⁴

Neither the Department nor ANR filed any comments on VEC's petition. Additionally, no party requested a hearing on the petition, and we have determined that a hearing is not necessary.

II. FINDINGS

1. VEC, a Vermont corporation, is an electric cooperative authorized to serve the public in its designated service territories pursuant to the rules and regulations of the Board. Amended Petition at 1.

2. As a result of its acquisition of the Vermont service territory of Citizens Communications Company ("Citizens"), VEC owns facilities in northeastern Vermont which are operated or are capable of being operated at 34.5 kV voltage. Citizens acquired most of these facilities from Public Service of New Hampshire ("PSNH") and New Hampshire Electric Cooperative. Amended Petition at 3.

3. Amended Petition, Prayer for Relief at 5.

4. Letter from Victoria J. Brown, Esq. to Susan M. Hudson, Clerk of the Board, dated 8/19/10 at 1-2.

3. VEC has received a grant for \$11.2 million from the United States Economic Development Administration which will enable VEC to upgrade certain of its facilities in the Northeast Kingdom⁵ to 34.5 kV. VEC refers to this project as the Northeast Kingdom Connector ("NEK Connector"). The NEK Connector includes the following work:

- (A) Reconstruction of an existing 7.2 kV line on Vermont Route 102 in Bloomfield ("Bloomfield North Circuit") for operation at 34.5 kV.
- (B) Extension of the Bloomfield North Circuit by construction of approximately 0.8 miles of new line on Vermont 102 in Bloomfield and Lemington for operation at 34.5 kV.
- (C) Conversion to 34.5 kV of the existing 12.47 kV line on Route 105 in Bloomfield between the 19.9/7.2 kV stepdown transformers and Route 2. Upon completion of this work, VEC intends to retire or relocate the existing stepdown transformer bank on Route 105 in Bloomfield.

Amended Petition at 9.⁶

4. VEC also plans to convert an existing line between Bloomfield and Maidstone ("Bloomfield South Circuit") from 7.2 kV to 34.5/19.9 kV operation beginning sometime in the next three years to meet future load growth. Amended Petition at 10.

III. DISCUSSION

We conclude that, until a rule of broader applicability can be promulgated by the Board, the application of the interpretations of G.O. 51 for VEC as outlined in the Board's Orders in Docket Nos. 5738, 5759, and 5834 for Central Vermont Public Service Corporation ("CVPS"), Citizens Utilities Company ("Citizens Utilities") and Green Mountain Power Corporation ("GMP"), is consistent with the general good of the state. This policy continues to promote regulatory and administrative efficiency, and it provides for review of distribution and

5. The Northeast Kingdom consists of Caledonia, Essex and Orleans counties.

6. The upgrades VEC plans on making as part of the NEK Connector are described in detail in the prefiled testimony of VEC witness Harry Abendroth, submitted in support of the initial petition. The lines and facilities that are part of the project are listed on Exhibit VEC-HRA-1 and location maps are set forth in Exhibits VEC-HRA-2 and 3. See Amended Petition at 10.

transmission lines and facilities before the appropriate regulatory bodies, pending formal revision of G.O. 51.

On October 24, 1972, the Board issued General Order No. 51, *Interpretation of 30 V.S.A. § 248* ("G.O. 51"). In G.O. 51, the Board stated that:

[t]he Public Service Board will assume that each of the following two types of lines are transmission lines within the meaning of 30 V.S.A. § 248, as amended, in the absence of a specific declaration by the Public Service Board to the contrary: (1) any line or facility designed to operate or capable of operating over 30 kV; and (2) any tie-line or facility designed to operate or capable of operating at any voltage.⁷

General Order No. 51 further provided that:

A distribution line (or facility) whose principal purpose is to serve individual customers, and whose service to individual customers is physically interrupted only by a transformer and service drop, remains under the jurisdiction of the Environmental Board and District Environmental Commission as provided by Act 250, 10 V.S.A. §6001.⁸

It was the original intent of General Order No. 51 to provide a "bright line" test that would differentiate between transmission and distribution lines. With the advent of the construction of distribution lines at voltages that were formerly used only for transmission lines, the historic assumption that all facilities capable of operating above 30 kV were transmission facilities may no longer provide such an accurate bright line. Consequently, this declaratory ruling merely temporarily restores a functional distinction between transmission and distribution lines for VEC, and it clarifies the jurisdiction over these two kinds of power lines until General Order No. 51 can be amended through formal rulemaking procedures.

In the past, the Board has addressed requests for declaratory rulings under G.O. 51 seeking the more generalized relief that VEC has asked for in its Amended Petition. On June 17, 1994, November 8, 1994, and August 31, 1995, the Board issued Orders in Dockets 5738, 5759, and 5834 in response to petitions filed by CVPS, Citizen Utilities and GMP, respectively. In those Orders, the Board declared and determined for each petitioner that for purposes of

7. General Order 51.

8. *Id.*

jurisdiction under 30 V.S.A. § 248 and interpretation of G.O. 51, the following definitions are adopted:

An "electric transmission facility" within the meaning of 30 V.S.A. § 248 is a line and/or related facilities (including any substation), the purpose of which is the transporting of electric power at any voltage in bulk from a source or sources of supply to other principal parts of the system or to a distribution system.

A "distribution line or facility" is a line and/or related facilities (including pad or pole mounted line transformers), the purpose of which is to serve individual customers at any voltage not to exceed 34.5 kV; this definition does not include any line and/or facilities at any voltage if such lines and/or facilities function as a transmission facility.⁹

The intent of these definitions is to make it clear that, pursuant to 30 V.S.A. § 248, the Public Service Board is to retain jurisdiction over lines, regardless of voltage, that carry bulk power between sources (which may include generators, other transmission lines, and substations) and substations or other parts of the system, for further distribution or wholesale consumption, even though there may be some distribution directly from the line. The Natural Resources Board is to maintain jurisdiction over lines that function only as distribution lines, as provided by 10 V.S.A. § 6001, et. seq. Tie lines, which are not specifically included in the above definitions, fall into either definition based upon whether: (1) such lines provide an enhanced reliability or supply source to the distribution system or to another portion of the transmission system (transmission, under § 248); or (2) such lines merely connect nearby distribution lines or a "loop" to a distribution line (distribution, under Act 250).¹⁰

The Board has also addressed requests from utilities seeking a declaration that specific facilities to be constructed or modified were not transmission facilities, and therefore not within the Board's jurisdiction under 30 V.S.A. § 248, similar to the relief initially sought by VEC in its original petition.¹¹ For example, on August 1, 2002, and September 6, 2005, the Board issued

9. *CVPS G.O. 51 Petition*, Docket 5738, Order of 6/17/94 at 5; *Citizens Utilities G.O. 51 Petition*, Docket 5759, Order of 11/8/94 at 5; *GMP G.O. 51 Petition*, Docket 5834, Order of 8/31/95 at 5.

10. Docket 5738, Order of 6/17/94 at 4; Docket 5759, Order of 11/8/94 at 2; Docket 5834, Order of 8/31/95 at 3.

11. As noted in the Introduction section of this Order, VEC's amended petition states that its ultimate goal is to obtain the more generalized relief granted by the Board in Dockets 5738, 5759, and 5834, provided that approach is
(continued...)

Orders in Dockets 6532 and 7083 in response to petitions filed by Citizens and VEC. In these Orders the Board concluded that specific facilities described by each of the petitioners were not transmission lines, and therefore were not subject to 30 V.S.A. § 248. The Board's determination in each of these Dockets was based on specific information supplied by the petitioners in response to inquiries for additional information made by the Board or Department.¹²

In response to VEC's original petition, the Board issued its August 12, 2010, memorandum requesting additional technical information from VEC in order to conclusively determine whether the specific facilities described in the original petition, prefiled testimony, and exhibits were or were not transmission facilities, consistent with the relief sought by VEC in that original petition. VEC stated that it was unable to provide the requested information and instead filed its Amended Petition seeking, as its ultimate priority, the more generalized relief the Board granted in Dockets 5738, 5759, and 5834 discussed above.¹³

Accordingly, this Order does not make any determination as to whether the facilities that comprise the NEK Connector, or any other specific facilities described in the prefiled testimony and exhibits submitted by VEC in support of its initial petition filed on June 4, 2010, or its Amended Petition filed on August 20, 2010, are or are not transmission facilities subject to 30 V.S.A. § 248, nor does it create a blanket exemption from Board review of all 34.5 kV facilities constructed by VEC. Any possibility that the Board would issue a specific ruling that the NEK Connector facilities were distribution facilities, and therefore not subject to Board jurisdiction under 30 V.S.A. § 248, was eliminated when VEC represented that it was unable to provide the one-line diagrams requested in the Board's August 12, 2010 memorandum.

Rather, this Order provides the same relief granted in Dockets 5738, 5759 and 5834. The Orders in those Dockets simply established clarifying definitions that the petitioning utilities

11. (...continued)
more efficient than having the Board first rule on whether the specific facilities described in the initial petition are not transmission facilities, and therefore not subject to 30 V.S.A. § 248.

12. *Citizens G.O. 51 Petition*, Docket 6532, Order of 8/1/02 at 1-2, 5; *VEC G.O. 51 Petition*, Docket 7083, Order of 9/6/05 at 1, 6.

13. See Memorandum, Susan M. Hudson, Clerk of the Board to Victoria J. Brown, Esq., dated 8/12/10; letter, Victoria J. Brown, Esq., to Susan M. Hudson, Clerk of the Board, dated 8/19/10 at 1-2.

could utilize to make their own judgment as to whether a CPG was needed for a particular project, replacing the historic presumption that facilities over 30 kV were transmission facilities with a functional test that is used to determine whether or not facilities serve a transmission or distribution purpose based on their use, *regardless of their voltage*.¹⁴ Therefore, as a result of this Order, VEC must make the initial determination whether the NEK Connector facilities are transmission or distribution facilities based upon the criteria we enunciated in Dockets 5738, 5759, and 5834 and reiterate in this Order.

As in Docket Nos. 5738, 5759 and 5834, this Order will only apply to the petitioner, in this case VEC. Any permanent revision to General Order No. 51 will be adopted as a rule of general applicability pursuant to 3 V.S.A. § 806, et seq. Also, this Order does not "permit" or "authorize" the construction of any distribution lines at any voltage. VEC must obtain any other necessary permits or approvals prior to construction of any distribution lines.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, by the Public Service Board of the State of Vermont that:

1. The Board hereby declares and determines that for purposes of jurisdiction under 30 V.S.A. § 248 and interpretation of G.O. 51 for Vermont Electric Cooperative, Inc., the following definitions are adopted:

An "electric transmission facility" within the meaning of 30 V.S.A. § 248 is a line and/or related facilities (including any substation), the purpose of which is the transporting of electric power at any voltage in bulk from a source or sources of supply to other principal parts of the system or to a distribution system.

A "distribution line or facility" is a line and/or related facilities (including pad or pole mounted line transformers), the purpose of which is to serve individual customers at any voltage not to exceed 34.5 kV; this definition does not include any line and/or facilities at any voltage if such lines and/or facilities function as a transmission facility.

14. Facilities over 34.5 kV do not qualify for treatment as distribution facilities under the clarifying definitions. See Docket 5738, Order of 6/17/94 at 5; Docket 5759, Order of 11/8/94 at 5; Docket 5834, Order of 8/31/95 at 5.

2. This Order shall be effective only until resolution of potential amendment of General Order No. 51, or until August 31, 2011, whichever occurs first.

3. Vermont Electric Cooperative, Inc. shall notify the Public Service Board and the Department of Public Service of any 34.5 kV distribution projects that it intends to commence while this Order is in effect.

4. This Order shall not be construed as granting approval of, or disapproving, any projects undertaken or to be undertaken by Vermont Electric Cooperative, Inc.

Dated at Montpelier, Vermont, this 17th day of November, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 17, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.